

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-10036

In The
United States Court of Appeals
For The Second Circuit

★

Docket No. 75-1036
UNITED STATES OF AMERICA,

-against-

MANUEL GONZALEZ,

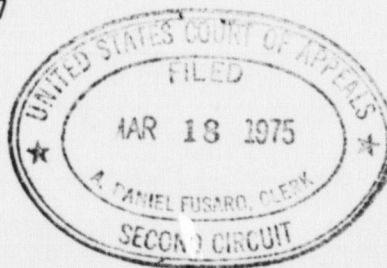
Appellant.

APPELLANT'S APPENDIX

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NEAHER, J. CONSTANTINO, J.

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		5/10/75	Holmes & Appleby Gunzaker	5 -	
Clerk,		5/10/75	Paid to Treas. }		5 -
Marshal,		1-10-75	Holmes & Appleby Gunzaker	5 -	
Attorney,		1-7-75	Paid to Treas. }		5 -
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
0-13-72	Before Costantino J - Indictment filed
10-31-72	Before Costantino J - Case called - Defts CORREA IRIZARRY & GONZALEZ present - defts arraigned and each enter a plea of not guilty - motion for reduction of bail as to deft IRIZARRY - Motion granted - Bail reduced to \$100,000 with 10% cash - case set down for Trial on Dec. 4, 1972 at 10:00 am - Bench Warrant ordered for John DOE.
0-31-72	Notice of appearance filed for JOSE VALENZUELA-CORREA (Irving Kornblum).
11-1-72	Magistrate's file 72 M 1883 inserted into CR file.
11-17-72	Notice of Motion filed, ret; Nov. 28, 1972, for Discovery, suppressing evidence, Bill of Particulars, adjournment of Trial date from Dec. 4, 1972 to Feb. 1973, etc. (Manuel Gonzalez)

DOCKET ENTRIES

B

72 CR 176

DATE	PROCEEDINGS
11-28-72	Before Costantino J - Case called - motion for Discovery adjd to Dec. 1, 1972 . (Manuel Gonzalez)
11/29/72	Notice of Motion filed(for all defts) returnable 12/1/72.
12-1-72	Before COSTANTINO-J.- Case called- Deft. IRIZARRY's motion for severance, adj'd to 12-4-72 at 11:00 A.M.
12-1-72	Before COSTANTINO- J.- Case called- Deft.GONZALEZ's motion for discovery & inspection, etc. adj'd. to 12-4-72 at 11:00 A.M.
12/4/72	Before COSTANTINO, J.- Case called- Attys to meet and agree upon portic of Discovery and Inspection. Motion for severance as to deft IRIZARRY is denied.- Trial adjd to 1/8/73 at 10:00 A.M.
1/2/73	Before COSTANTINO, J.- Case called-Deft IRIZARRY and Atty Mr. Ostrow pre Motion to substitute by Hammer is denied -Motion to reduce bail as to De IRIZARRY is reduced to \$35,000.00 surety bond-Case set down for trial on at 10:00 A.M.
1/8/73	Before COSTANTINO, J.- Case called- Trial adjd to 1/15/73 at 10:00 A.M.
1-11-73	Affidavit of ERNEST H. HAMMER filed.
1/11/73	By COSTANTINO, J.- Memorandum and Order filed denying defts motion for taking deposition (Manuel Gonzalez)
1/15/73	Before COSTANTINO, J.- Case called- Defts Correa and Irizarry and attys present-Interpreter S. RODRIGUEZ sworn- Deft Correa withdraws his plea of not guilty and on his own enters a plea of guilty to ct. 3-Sentence adjd without date - Deft in custody.
1/15/73	Affidavit of atty ANDREW H. LAWLER filed, in further support of deft's motion to take the deposition of Mario Mena pursuant to Rule 15 of the Federal Rules of Criminal procedure.
1-19-73	xxxxxx
1-22-73	Stenographers transcript dated Jan. 15, 1973 filed
1/24/73	Affidavit filed requesting an order to prevent a failure of justice, the Court enter an order pursuant to the provisions of Rule 15, etc., permitting depositions to be taken in Chile.
1/24/73	Before COSTANTINO, J.- Case called- Motion argued and denied.
1/29/73	Before COSTANTINO, J.- Case called- Defts and attys presnt-Deft IRIZARR having been advised of his own rightw by the court and on his own behalf withdraws his plea of ^{not} guilty to ct. 3 and enters a plea of guilty to ct Sentence adjd without date.-Motion to suppress as to deft GONZALES hearing ordered bnd begun-Hearing concluded -Motion denied.
1/30/73	Before COSTANTINO, J.- Case called- Deft MANUEL GONZALEZ and atty present Trial ordered and begun-Trial cont'd to 1/31/73 at 10:00 A.M.

ONLY COPY AVAILABLE

DOCKET ENTRIES

CRIMINAL DOCKET

DATE	PROCEEDINGS
1/31/73	Before COSTANTINO, J.- Case called- Deft and Atty present and interpreter -Trial resumed- Trial cont'd to 2/1/73 at 10:00 A.M.
2/1/73	Before COSTANTINO, J.- Case called- Deft and Atty present-Trial resumedGovt rests-Motion to dismiss the indictment-Motion denied, with leave to renew-Trial cont'd to 2/2/73 at 10:00 A.M.
2/2/73	Before COSTANTINO, J.- Case called- Deft and his atty present-Trial resumed- Trial cont'd to 2/5/73 at 11:00 A.M.
2/2/73	Stenographer's transcripts of 1/15/73, 1/29/73, 1/30/31, 2/1/73, 2/2/73 and 2/5/73 filed.
2/6/73)	Before COSTANTINO, J.- Case called- Deft and atty present-Trial resumed- Motion to dismiss counts 2,3,5,6, and 7 are granted (as to deft MANUEL GONZALEZ)-Trial to 2/6/73
2/6/73)	Before COSTANTINO, J.- Case called- Deft GONZALEZ and counsel present-Trial resumed-Jury returns for further deliberation
	Jury returns and renders a verdict of guilty as to cts 1 and 4-
	Jury polled and discharged-Bail cont'd -Sentence adjd w/o date.
2/5/73	By COSTANTINO, J.- Order of Sustenance and Lodging filed. (& Transp
2/6/73	Affidavit filed re: that the court suppress all items seized as a result of the search.
2/6/73	Deft GONZALEZ's Memorandum of Law in support of Affidavit.
3-9-73	Before COSTANTINO J - Case called - Deft JOSE VALENZUELA CORREA & counsel Irving Kornblum present - deft sentenced to imprisonment on count 3 for 3 years under 18:3651 - deft to serve 5 months. Balance of sentence is suspended and the deft is placed on probation for remainder of sentence and 10 years special parole. Interpreter Emil Rodriguez present and sworn. Deft is to be deported immediately. On motion of Asst. U.S. Atty Stechel counts 1, 2, 4, 5, 6 & 7 are dismissed.
3-9-73	Judgment and Commitment and Order of Probation filed - certified copies to Marshal and Probation. (JOSE VALENZUELA-CORREA)
3/23/73	Stenographer's transcript of 2/6/73 filed.
4/2/73	Before COSTANTINO, J.- Case called- Motion to adjourn sentence is adjd to 4/3/73
4/3/73	Before COSTANTINO, J.- Motion to adjourn sentence granted-Sentence adjd to 4/27/73 (M. Gonzalez)
4/6/73	Before COSTANTINO, J.- Case called- Sentence adjd to 4/9/73 (IRIZARRY) and 4/27/73 for (GONZALEZ)

DOCKET ENTRIES

D

DATE	PROCEEDINGS
4-9-73	Before COSTANTINO J - Case called - Deft BOLIVAR IRIZARRY & counsel Seymore Ostrow present - deft sentenced to imprisonment for 8 years on count 3 - pursuant to 18:4208(a)(2) and special parole of 5 years pursuant to 18:4208(a)(2). On motion of Asst US Atty Stechel counts 6 and 7 are dismissed.
4-9-73	Judgment & Commitment filed - certified copies to Marshal (IRIZARRY)
4/12/73	Certified copy of Judgment and Commitment retd and filed. Deft delivered Fed. Det. Hdqs. (B. IRIZARRY)
4/23/73	Letter dated 4/14/73 filed from deft IRIZARRY re: reduction of sentence.
4-27-73	Before Costantino J - Case called - adjd to May 11, 1973 (sentence of deft Manuel Gonzalez)
5-11-73	Before COSTANTINO J - Case called - Deft GONZALEZ & counsel P. De Lorenzo present. Deft moves to set aside Jury verdict - Motion denied - deft sentenced for a period of 10 years on count 1 and 5 years on count 4 - to run concurrently pursuant to 18:4208(a)(2) and special parole term of 5 years. Bail increased to \$10,000 cash to be posted by May 16, 1973. Deft is released under custody of his attorney pending Notice of Appeal.
5-11-73	Judgment & Commitment filed - certified copies to Marshal (GONZALEZ)
5-11-73	Notice of Appeal filed (GONZALEZ)
5-11-73	Docket entries and duplicate of Notice of Appeal mailed to the C of A (GONZALEZ)
5/14/73	By SCHIFFMAN, MAG. - Order for Acceptance of Cash Bail filed.
5/18/73	Stenographer's transcript of Jan. 29, 1973 filed.
5/29/73	Stenographer's transcript filed dated May 11, 1973.
6/1/73	By COSTANTINO, J. - Memorandum and Order filed denying defts motion for reduction of sentence (IRIZARRY) - Order dated May 18, 1973 recd and filed on 6/4/73
6/7/73	Stenographer's transcript of 4/3/73 filed.
6/7/73	By COSTANTINO, J. - Memoandum and Order filed that the deft B. IRIZARRY's motion for a reduction of sentence is denied.
6/7/73	Stenographer's transcript of 11/28/73 filed.
6/11/73	Motion for Reduction of sentence filed (BOLIVAR IRIZARRY)
6/11/73	Letter of 5/5/73 from deft BOLIVAR-IRIZARRY filed (recd from chambers)
6/12/73	Stenographer's transcript of 4/9/73 filed.
6/19/73	Deft Gonzalez's Requests to Charge filed.
6/20/73	Index to Record on Appeal certified and handed to Mr. Alfred L. Thomas for delivery to the C. of A. (GONZALEZ)
6-21-73	Magistrate's file 73 M 695 inserted into C. of A. file.

F

DATE _____

PROCEEDINGS

D. C. 109

DOCKET ENTRIES

F

CRIMINAL DOCKET

DATE	PROCEEDINGS
11/12/74	Before NEAHER, J.- Case called- Deft GONZALEZ and counsel present- Trial ordered and begun- Jurors selected and sworn- Trial contd to 11/13/74 at 10:00 A.M.
11-13-74	Stenographers transcript filed dated Nov. 8, 1974-11 o'clock.
11-13-74	Before NEAHER, J - case called - deft MANUEL GONZALEZ & counsel Michael Dizenzo present - trial resumed - deft moves for withdrawal of a Juror and for mistrial - motion denied - Trial to be contd on Nov. 14, 1974
11/14/74	Before NEAHER, J.- Case called- Deft and counsel present- Trial resumed- Motion by deft to change interpreter from Albert Boyne to Margareta Mensa- motion granted- trial contd to 11/18/74 at 10:00 A.M. (GONZALEZ)
11-18-74	Before NEAHER, J - case called - deft MANUEL GONZALEZ & counsel M.P. Dizenzo by L. Toombs of counsel present - trial resumed - Deft moves for dismissal of the Indictment - Motion denied - Trial to be contd to Nov. 19, 1974.
11-19-74	Before NEAHER, J - case called - deft Gonzalez present with counsel - Trial resumed - Trial to be contd on Nov. 20, 1974.
11-20-74	Before NEAHER, J - case called - deft & atty present - trial resumed - Deft Gonzalez moves for Judgment of acquittal and for directed verdict etc. Court denied the motions - except count (1) Court reserves the decision on count (1) Trial to be contd 11-21-74.
11-21-74	Voucher for Expert Services filed (def't Manuel Gonzalez) Margarita Mensa - interpreter.
11/21/74	Before NEAHER, J.- Case called- Deft GONZALEZ and counsel present- Trial Trial contd to 11/25/74 at 10:00 A.M.,
11-22-74	Stenographers transcript filed dated June 4, 1974. (Gonzalez)
11/25/74	Stenographers Transcript dated 10/7/74 filed
11-25-74	Before NEAHER, J - case called - deft Manuel Gonzalez & counsel M.P. Dizenzo by L. Toombs present - trial resumed - Trial to be continued on Nov. 26, 1974.
1/26/74	Before NEAHER, J.- Case called- Deft and counsel present- Trial resumed Deft renews motion for judgment of acquittal and for a directed verdict in favor of deft- decision reserved (conspiracy count) but all motions on substantive counts denied- Judge charges jury- XXXXXXXXXXXX Trial contd to 11/27/74 at 9:30 A.M.
11/27/74	By NEAHER, J.- Order of sustenance filed

C

[illegible]

INDEPENDENT AND PROBATIONARY COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
1 3 1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Michael P. Direnzo, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FILED

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY, in Counts 1 and 4

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S.C. Sec. 952(a), 963, and T-18, U.S.C. Sec. 2, in that on or about and between September 1, 1972 and October 9, 1972, both dates being approximate and inclusive, the defendant with others, did conspire to commit an offense against the U.S. in violation of T-21, U.S.C. Sec. 952(a), by conspiring to import into the U.S., and did knowingly and intentionally import into the U.S. from a place outside thereof, a quantity of Cocaine Hydrochloride, a Schedule II narcotic drug controlled substance.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of

5 years pursuant to Sec. 4208(a)(2) of Title 18, U.S. Code on counts 1 & 4 - sentence to run concurrently also special parole term of 10 years on counts 1 and 4 to run concurrently. Execution of sentence is stayed pending appeal.

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

COMMITMENT RECOMMENDATION

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.



JAN 3 1975



TIME A.M.
P.M.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Edward R. Nealer

1 And Agent Keefe, he had been informed by Mr.
2 Patterson in my office to pack a bag and get ready
3 to go and he was told it was cancelled by you.

4 MR. DIRENZO: That's what he said.

5 MR. DAWSON: Mr. Patterson indicated he will
6 make himself available as a witness should you
7 desire to call him and pursue that matter.

8 MR. DIRENZO: I am sure that issue will be
9 taken up with the Court. We intend to establish
10 whatever efforts we may to obtain this witness
11 to make him available for this trial by deposition
12 or otherwise -- we intend to show that --

13 THE COURT: What is it you are proposing to
14 do?

15 MR. DIRENZO: We intend to show what efforts
16 we took to depose the defendant. We claim to be
17 the defendant, Mario down in Chile.

18 We understand the man's name to be Mario
19 Flores.

20 THE COURT: It is not going to be part of the
21 trial.

22 MR. DIRENZO: Surely it will be an offer of
23 proof.

24 THE COURT: I will not deny you an opportunity
25 to offer proof but I don't see the relevancy to the

1 4 issues in the case.

2 MR. DIRENZO: Especially in view of the fact
3 Agent Keefe testified we call it off.

4 THE COURT: First of all, the man you refer
5 to as Mario Minno Flores has not been mentioned in
6 this case at all.

7 MR. DIRENZO: It is going to develop on the
8 defendant's case.

9 THE COURT: In what way?

10 MR. DIRENZO: Through the defendant himself.

11 THE COURT: We will see about that. I
12 certainly wouldn't want an adequate offer of proof
13 to pass upon that in a conclusive way. I merely
14 meant I somehow linked your proof effort with
15 respect to something the United States Attorney's
16 Office had done or had not done -- in my opinion the
17 United States Attorney's Office was under no obli-
18 gation to find a witness for the defendant although
19 he had an obligation to let you know where he was
20 if he knew.

21 MR. DIRENZO: There is no doubt that the
22 obligation and responsibility was not placed on the
23 Government. As a matter of fact we reached the
24 point where we elicited help from the United States
25 Attorney's Office --

1 5 THE COURT: I understand you elicited the
2 Government's help.

3 MR. DIRENZO: And they cooperated.

4 THE COURT: I take it you got it as far as
5 they were able to --

6 MR. DIRENZO: Generally, that is the area and
7 hopefully we will be able to furnish your Honor with
8 some law -- there is very little on the subject in
9 this particular area -- but hopefully we can
10 demonstrate by adequate or inadequate legal authority
11 to sustain our contention.

12 THE COURT: I would want to see that.

13 MR. DIRENZO: I assure you we have been
14 exploring this matter. We did some research until
15 late last night. I didn't have the degree of
16 success I had hoped for. It usually involves a
17 deceased witness and witnesses in that area. But,
18 I am trying to legally reconcile from other things I
19 have read and maybe we will have a novel situation
20 here and maybe we can make or create some new law.

21 We are trying, I promise your Honor.

22 THE COURT: All right. See you tomorrow at
23 10:00 Goodnight.

24 (A recess was taken until November 19, 1974
25 at 10:00 a.m.)

1 6 Irizarry - direct

2 Q Was that in response to a letter that you had
3 sent to me?

4 A Yes.

5 Q Was that in response to a letter which you had
6 sent to me from Atlanta, Georgia?

7 A Yes.

8 Q Up to the time that I did meet you, you had
9 never seen me; is that correct?

10 A No.

11 Q I had never spoken to you; correct?

12 A Right.

13 Q Would you be good enough to tell the jury
14 where you first saw me?

15 A Federal Detention Headquarters, New York.

16 Q And I came there to visit you pursuant to your request;
17 is that correct?

18 A Correct.

19 Q Now, you were charged with, among other
20 things, the crime of conspiracy to possess and distribute
21 a dangerous drug, a dangerous scheduled drug; is that
22 correct?

23 A Right.

24 Q And you pleaded guilty to that crime, did you
25 not?

7 Irizarry - direct

905

A Yes, I did.

Q And you were sentenced on that crime, were you not, on your plea of guilty?

A Yes.

Q After having taken that plea you were sentenced to a term of imprisonment for a term of eight years; is that correct?

A Right.

Q You entered upon service of that sentence and you are presently serving it here; is that correct?

A Yes.

Q And you are now in New York pursuant to an order directing that you be brought here; is that correct?

A Yes.

Q At present you do have an appeal pending in connection with the plea that you took; is that correct?

A Yes.

Q And you moved to vacate that plea, did you not?

A Correct.

Q And that appeal has already been argued in the United States Court of Appeals for the Second Circuit; is that correct?

A Yes, it has.

Q And you are awaiting a decision on your motion

Irizarry - direct

906

1 8
2 to vacate and set aside that appeal; is that also correct?

3 A Right.

4 Q It is a fact, is it not, that his Honor informed
5 you of your constitutional rights here only a moment before
6 you began to testify, that you need not testify if you didn't
7 want to testify; is that correct?

8 A That is correct.

9 Q And did his Honor inform you also that if you were
10 successful on your appeal that any of the answers that you give
11 questions that are propounded to you by me or Mr. Dawson,
12 the Assistant United States Attorney, that those answers
13 can be used against you in any subsequent trial?

14 A Yes.

15 Q And in spite of that admonition you are
16 prepared here to testify as to the facts as you know them
17 in this case; is that a fair statement?

18 A That's true.

19 Q And you understand this?

20 A I understand.

21 Q You have full knowledge of all the facts
22 today?

23 A Yes.

24 Q His Honor made them crystal clear to you, did
25 he not?

9

Irizarry - direct

907

A Yes, he did.

Q And as a matter of fact, when I spoke to you I told you that I would not have spoken to you unless I had spoken to your attorney first; is that correct?

A Yes.

Q And did he tell you also that in talking to me you had a right at any time to refuse to answer any of my questions?

A That's true.

Q And in the conversation that you had with me -- by the ways, Mr. Toombs was present; is that correct? When I say Mr. Toombs, he's the gentleman with that impressive golden mustache.

A Yes.

Q Now, -- and you agreed to answer the questions; is that correct?

A Yes, I did.

Q Now, inviting your attention to the date of August 7, 1972 --

THE COURT: August?

MR. DIRENZO: October 7th. It's like using the word champagne, your Honor. I'm a little bit ahead of myself, I'm sorry.

Q Do you know the premises known as " "

907a

9a

Irizarry - direct

located at 1511 Westchester Avenue in the Borough of the
Bronx?

A I've never been there.

(continued next page.)

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Irizarry - direct

1

DIRECT EXAMINATION

BY MR. DIRENZO: (Cont'd)

Q In your entire life you have never been there;
is that your testimony?

A That's right.

Q By the way, have you ever been known or have
you ever held yourself out to be Ricardo Gonzalez?

A No.

Q Inviting your attention specifically to
October 7, 1972, did you see Mr. Manuel Gonzalez on that date?

A No, I didn't.

Q On October 8, 1972, did you see Manuel Gonzalez,
the defendant in this case?

A Yes, I did.

Q Where did you see him?

A I don't know the street but it was the office
of the Customs Bureau.

Q If I told you 201 Varick Street, would that
refresh your recollection?

A No, because I don't know the address.

Q And that was after you were arrested; is that
correct?

A Yes.

Q And when you saw Mr. Gonzalez at the Customs

2 Irizarry - direct

office, or Customs Detention, did you know at that time when you saw him that he was being detained and was arrested in connection with the case you were arrested in?

A A No, I didn't know.

Q Would you be good enough to tell us the circumstances under which you saw Mr. Gonzalez on that day?

A I saw him through a crack in the door. The agents opened the door and told me to look through the crack and see if that was the man.

Q Who was the agent who opened the door, put it slightly ajar and asked you to look through that aperture through the door?

A I don't know his name but he was my arresting officer.

Q And when he asked you if that was the man, did you answer that question?

A Yes, I did.

Q And what did you tell him?

A I said no.

Q Now, there did come a time, did there not, Mr. Irizarry, when you had occasion to go to 300 Yonkers Avenue; is that correct, in Yonkers, New York?

A I don't know if it's 300 but it was Yonkers.

Q Well, did you go to a place called Yonkers

3 Irizarry - direct

Motor Inn?

A Yes, I did.

Q And did you go to a room at that motel designat-
ed Room 200?

Q I believe the room was 210.

Q Now, Mr. Irizarry, I show you Government's Exhibit 11 in Evidence and ask you to look at it and see whether this refreshes your recollection as to the room that you went to that day.

A Yes, it is.

Q After looking at it, do you now know the room that you went to, the number of that room?

A No, I didn't look at the number.

Q Would you be good enough to look at it?

220.

Q Now, would you be good enough to tell this Jury the circumstances under which you happened to go to Room 220 of the Yonkers Motor Inn on October 8, 1972?

A Well, I was approached at the Tropical Inn Bar at 149th Street and St. Ann's Avenue, I was inside a bar and approached by this fellow who called himself Joe. He asked me to do him a favor and go and pick up a package on Sunday, which would be the next day. I said yes, and he offered me \$100 for doing this.

1 5 would be very persuasive with this jury.

2 THE COURT: This is not a trial on any issue
3 of speed reading. I assure you.

4 MR. DIRENZO: Insofar as that particular
5 letter is concerned, since it's evidence in this
6 case, I say it's a very important issue in this case.

7 THE COURT: I disagree. I think it's of no
8 probative value whatsoever.

9 MR. DIRENZO: I yield to your Honor. And
10 what more can I say?

11 THE COURT: Okay.

12 MR. DIRENZO: I still think I should be per-
13 mitted. You say, no. I bow.

14 THE COURT: All right.

15 THE CLERK: The marshal asks, do you want
16 Irizarry now? Are you going to bring him back?

17 MR. DAWSON: Do you need him?

18 MR. TOOMBS: No.

19 MR. DIRENZO: No.

20 THE CLERK: Are you through with him?

21 MR. TOOMBS: Yes.

22 MR. DIRENZO: Your Honor, I think we are going
23 to have another problem. I now have Harry Hammer
24 here.

25 THE COURT: Who?

6

MR. DIRENZO: Harry Hammer. He was the attorney--

MR. DAWSON: Ernest.

MR. DIRENZO: -- who represented one of the -- one of the attorneys who represented Mr. Gonzalez at the previous trial. Harry Hammer is also the lawyer that went to Chile and spoke to a man, Mario Menna Flores. That was the -- he apparently visited the defendant named as John Doe in this case.

MR. DAWSON: We don't know.

MR. DIRENZO: I said apparently.

MR. DAWSON: I didn't hear you. I am sorry.

MR. DIRENZO: And I wanted to call him to show what steps we took to locate Mario.

MR. DAWSON: Mario who?

MR. DIRENZO: Mario. We understand this Mario to be the defendant named John Doe in this case. Just to show what steps we took.

THE COURT: Now, I believe the record in this is abundantly clear from prior meetings as to efforts that were made to locate this so-called missing witness. I'm not prepared to accept your statement now that Mario Menna Flores and the Mario C. who signed this letter are one and the same person. I am not prepared to accept that. I don't think

1 7 there would be any basis formaking such a sugges-
2 tion to the jury.

3 I don't know whether any of -- I don't under-
4 stand that the Government is going to contend or
5 is in a position to contend in the state of the
6 record that the defense, (a), was under an obligation
7 to find this man Mario, or (b), if they did find him,
8 get him to come from South America to the United
9 States for the purpose of this trial, or (c), that
10 he would be of any use to the defense if he were here.

11 And, therefore, the defense should not be
12 prejudiced by having the jury left with the impression
13 that (1), he was available and (2), he isn't here
14 because the defense didn't get him here.

15 Now, there is no burden on the defense in this
16 case at all.

17 MR. DIRENZO: Now --

18 THE COURT: And for us to get into that, we
19 will just get this jury off on a complete sidetrack
20 and distract them from the issue in this case, which
21 is whether this -- the Government by the evidence
22 it has offered, has offered enough evidence to satisfy
23 this jury beyond a reasonable doubt as to the compli-
24 city if any of your client in this case. That is what
25 is on trial here.

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MR. DIRENZO: All right. Now, do I understand, if your Honor please -- if I may prognosticate, that Manuel Gonzalez, when he testifies, if he is asked by me or counsel for the defense what efforts if any did you expend in attempting to locate Mario --

(Continued on next page.)

1036

1 MR. DIRENZO (Continuing): Mario Mena Flores,
2 Mario C., whatever it is, that your Honor will permit
3 or not permit us to ask that question?

4 THE COURT: I am not ruling on that in advance.
5 When we come to that point, I will consider it in the
6 context in which it is made. Assuming that that
7 comes up in a context relative to the issues as they
8 now stand. No issue has been made as I see it that
9 the defense is under any burden to produce Mario.

10 MR. DERENZO: It isn't under a question of
11 being a burden. It is to establish how far we want
12 to establish we had nothing to do with this operation.
13 That is the purpose for it, your Honor.

14 MR. TOOMBS: And to show that there was in fact
15 such a person.

16 THE COURT: Obviously there must be a person
17 named Mario who wrote a letter to Mr. Gonzalez.

18 MR. DIRENZO: That doesn't follow either.

19 THE COURT: And there was some testimony that
20 there was a man named Mario who had been up here and
21 who had been at your client's place.

22 MR. DIRENZO; No doubt about it. My client
23 will so testify.

24 THE COURT: All right, when you reach the
25 point we had better have another discussion about it,

2

1

unless the Government doesn't object.

2

MR. DAWSON: I do.

3

4

5

6

MR. DIRENZO: I take it that my calling this witness, Correra, for the purpose for which I designated, your Honor refuses to grant me that application?

7

8

THE COURT: On the grounds as indicated.

9

10

MR. DIRENZO: For the sake of protecting the record, may I have Mr. Harry Hammer identified for the record?

11

12

MR. DAWSON: I will stipulate as to his identification.

13

14

THE COURT: Don't we have an affidavit from him as part of the record?

15

16

MR. DIRENZO: That was in connection with something else.

17

18

MR. DAWSON: No, there is an affidavit by Ernest Hammer, the lawyer at the first trial, indicating and discussing going down to Chile.

19

20

21

MR. TOOMBS: That's not in evidence in this trial before this jury.

22

23

24

25

THE COURT: It is part of the record of this case. I would certainly permit you to make it part of the record for Appellate purposes. What we are concerned about is the correctness of my rulings and

3 1 the Court can have before it all the proceedings
2 since the time of the reversal and the assignment of
3 the case to me that related to the question of
4 efforts made to locate a man referred to in the
5 affidavit of this defendant's former lawyer.

6 MR. DAWSON: May I just add this --

7 THE COURT: The affidavit will be made part
8 of the record.

9 MR. DAWSON: All of the minutes of the various
10 court dates before your Honor, since the reversal,
11 where it was discussed by Mr. Pattison of my office,
12 Mr. Toombs and Mr. Direnzo, have been transcribed and
13 I would have no objection to placing them into the
14 record for the sake of the completeness of that
15 record.

16 MR. DIRENZO: Not for the jury?

17 MR. DAWSON: No, no, the Court record for the
18 sake of completeness of the record on this point.

19 MR. DIRENZO: Are you prepared to stipulate
20 that Harry Hammer --

21 THE COURT: Is that his name?

22 MR. DIRENZO: Ernest H. Hammer. His father or
23 uncle was a Supreme Court justice.

24 MR. DAWSON: I will stipulate that that is
25 the gentleman in Court presently sitting at defense

1 table with the defendant.

2 MR. DIRENZO: All right.

3 THE COURT: That he is here and he was the
4 former lawyer who made efforts to locate this witness,
5 whatever his name was.

6 MR. DIRENZO: Or defendant.

7 THE COURT: Because we are not sure whether
8 Mario C. or another gentleman called Mario Mena
9 Flores, who was last reported to be a taxicab driver,
10 and disappeared in Santiago, Chile.

11 MR. DIRENZO: We will rest on the statements
12 made. The other thing I wanted to establish for the
13 record in connection with that -- and I think it's
14 in there -- but I want to accentuate it. If I
15 remember a statement was made by Mr. Pattison to
16 your Honor. It was to the effect that they had in
17 Chile two American agents.

18 MR. DAWSON: All they had in Chile?

19 MR. DIRENZO: Yes.

20 MR. DAWSON: If I remember the record
21 correctly --

22 MR. DIRENZO: I just wanted to show they
23 couldn't have made much of an investigation with two
24 agents, if we take the area -- the square mileage
25 of Chile alone.

1 MR. DAWSON: I do not recall seeing the
2 number two.

3 THE COURT: I am sure that those agents are
4 not there for the purpose of finding missing Chilean
5 persons.

6 MR. DAWSON: I recall the eliciting of the aid
7 of the Chilean police.

8 MR. DIRENZO: I think you will find in there --

9 MR. DAWSON: Whatever it may be.

10 MR. DIRENZO: I take it that you do not want
11 us to call him and then have him make the objection,
12 then excuse the witness?

13 THE COURT: No.

14 MR. DIRENZO: You don't want that.

15 MR. DAWSON: No.

16 MR. DIRENZO: Will your Honor consider the
17 declaring of a recess now for lunch? This way we
18 could come back and we could start DeNovo.

19 THE COURT: Who will start after lunch?

20 MR. DIRENZO: Two character witnesses. They
21 are not here now.

22 THE COURT: And then after that?

23 MR. DIRENZO: Mr. Dawson.

24 THE COURT: All right, I will recess until
25 2:00 o'clock.

5

1

M. Gonzalez - direct

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A Yes.

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MR. DAWSON: Objection. This witness was not present.

5

THE COURT: He doesn't know that of his own knowledge.

6

7

Q In any event, you dispatched Mr. Harry Hammer to

8

Chile?

9

A Yes.

10

Q For that purpose; is that correct?

11

A He brought an Affidavit back that had witnesses --

12

MR. DAWSON: I object.

13

THE COURT: No. I understand.

14

Q Forget the Affidavit. Forget the contents of it.

15

You sent him there?

16

A Yes.

17

Q You paid the expenses for him going there?

18

MR. DAWSON: I object.

19

THE WITNESS: Yes.

20

MR. DAWSON: I object to this.

21

Q You attempted to locate the man; is that correct?

22

A Very much so.

23

Q Did you attempt to bring him here?

24

A Yes.

25

Q Did you attempt to have him questioned over there?

1095

6 1

M. Gonzalez - direct

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A Yes.

3

Q Did you attempt to -- in this court, to get a deposition so that with -- this testimony could be used here?

5

A Yes.

6

Q Did you attempt to do that?

7

A Yes.

8

MR. DAWSON: Who are we talking about?

9

MR. DIRENZO: Mario Menna.

10

Q And what did you learn?

11

A Flores.

12

Q Flores.

13

And you did that through Mr. Hammer?

14

A Well, Mr. Hammer had gotten somebody to assist him over there, Mr. Schweitzer.

16

MR. DAWSON: Now, I object to what someone else

17

removed beyond Mr. Hammer did.

18

THE COURT: Sustained.

19

Q Can you tell us whether these services of a Chilean attorney --

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21

MR. DAWSON: Now, I object.

22

Q (continuing) -- were also --

23

GR fls 24

(continued on next page.)

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Gonzalez-direct

1096

2

THE COURT: Now, wait a minute. I consider

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that not related to the issues that are here before

4

this jury now.

5

MR. DIRENZO: All right.

6

THE COURT: We were talking, as you said, about

7

a man named Ricardo. That is what I understood.

8

MR. DIRENZO: Now we are talking about Mena.

9

Mario Mena and the efforts that were made to attempt

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to locate that man and bring him here.

11

THE COURT: All right. We have heard that

12

before.

13

MR. DIRENZO: Can I ask this question? I'll

14

take your Honor's ruling.

15

BY MR. DIRENZO:

16

Q What other steps, if any, did you take to

17

either have Mena brought here as a witness or have him deposed

18

in Chile or Santiago?

19

MR. DAWSON: I object, your Honor, and I would

20

ask that the jury be properly instructed.

21

THE COURT: I sustain the objection.

22

MR. DIRENZO: I am only seeking to ask the

23

question to establish that this defendant attempted to

24

avail himself --

25

THE COURT: The jury understands that.

1205

1 2 Gonzalez-cross

2 I forgot about it. If I was curious I would have had the
3 letter with me and they would have taken it, but I brought
4 the letter to them.

5 Q You gave Correa \$300 because Ricardo said to do it,
6 is that right?

7 A Yes.

8 Q You gave him the two cut bills because Ricardo said
9 to do it?

10 A Yes.

11 Q And you gave Ricardo the card because he said he
12 would pick up the shoes?

13 A Yes.

14 Q Back in 1972, did you have a telephone address book?

15 A Yes.

16 Q Does the name Irrizary appear in that telephone book
17 under the I's?

18 A Irrizary is a common name. There is a Tony Irrizary
19 who owns a bar called La Bahia.

20 Q Isn't he related to Bolivar Irrizary?

21 A I don't know, but I never saw them together.

22 MR. DIRENZO: Mr. Dawson, will you make a represen-
23 tation that they are related and you know them to be
24 related?

25 MR. DAWSON: I think the matter might properly be

3

Gonzalez-cross

1206

placed at sidebar.

MR. DIRENZO: I think we should have done that before. I think it should be.

THE COURT: Come up here.

(Sidebar discussion out of hearing of the jury.)

MR. DAWSON: I have been told by one of the agents on the case who was pursuing some investigation regarding Irrizary --

MR. DIRENZO: This Irrizary who testified?

MR. DAWSON: Yes. When they photostated the book, the Defendant's address book, and the name Irrizary, Antonio Irrizary was there, they checked preliminarily and they heard some word that he was a cousin of Antonio Irrizary and that is how he got employment in one of the bars.

The phone number of Tony Irrizary in the book has been disconnected or changed, and whether they have another phone, I don't know. I cannot say that I know for an absolute fact that Tony Irrizary is related but that was the information.

THE COURT: Wait a minute. You lost me because I thought your question was Bolivar Irrizary was related to the man on the stand.

MR. DAWSON: Oh, no.

1 4

Gonzalez-cross

1207

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MR. DIRENZO: I did not understand it that way.

3

What he was attempting to do was to show that he had

4

Irizarry's name in that address book. When he first

5

asked the question I had to assume that it was Bolivar

6

Irizarry. I said nothing. I have no objection to

7

that, although I think the address book was or should

8

have been delivered.

9

MR. DAWSON: He put it on the stand there.

10

MR. DIRENZO: What I am concerned about is when

11

he asked the question about Irizarry, he is talking

12

about somebody who is supposed to be a distant cousin

13

or a cousin to Bolivar Irizarry who was on the stand.

14

I think that is extremely prejudicial, unless he has

15

some real basis to show the connection, because there

16

are many Spanish names alike, Gonzalez, Rodriguez,

17

Irizarry.

18

The point is this is a crucial part of the case.

19

That puts him close to Irizarry.

20

THE COURT: I understand that, and the question

21

is is it admissible.

22

I mistakenly had the impression that the question

23

had to do with the relationship of Irizarry and this

24

defendant.

25

MR. DIRENZO: I don't think it has that connotation

1 5

Gonzalez-cross

1208

2 at all.

3 MR. DAWSON: No, your Honor.

4 THE COURT: That is the way I understood it.

5 When he was asked the question whether the name
6 Irizarry appeared in this book he didn't say yes or
7 no. He started to talk about --

8 MR. DAWSON: He put the book on the stand.

9 All I can say --

10 THE COURT: Just a moment. We will allow
11 Government counsel here to inquire because I don't
12 think I have heard the answer yet as to whether this
13 witness is related in any way and if he says no, that
14 is the end of the inquiry.

15 The mere fact that Irizarry is related to some-
16 one else --

17 MR. DIRENZO: It is not a question of him being
18 related. There is some talk that he might be. You are
19 saying that right here.

20 When you asked that question you knew that and
21 you had no positive proof they were related. I think
22 that is very prejudicial.

23 THE COURT: If the name Irizarry appeared in the
24 telephone directory, that is a basis for asking him that
25 question.

6

Gonzalez-cross

1209

MR. DAWSON: I have another basis. Two witnesses for the Government, two agents, they said as soon as the man left the bar they saw the defendant go to the phone and make a phone call.

THE COURT: And they did not know who he called?

MR. DAWSON: No, but the next thing they knew a man shows up in the hotel. I wasn't going to pursue it much further.

THE COURT: That is highly speculative. If you can't do better than that you might as well give up on the agents.

MR. DAWSON: I wasn't going to do it.

MR. DIRENZO: It is a great deal of reluctance -- with a great deal of reluctance, if your Honor please, that I move for the withdrawal of a juror and the declaration of a mistrial.

THE COURT: I will deny your motion.

As I said, unless there is, unless you have some basis for believing that Irizarry is related to this defendant --

MR. DAWSON: No, I don't.

THE COURT: Then, I think there is an answer, and I don't know whether he said yes or no or what telephone number. Is there a telephone there?

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Charge

1352

2 THE COURT: Members of the jury:

3 We are now at the stage of trial, when you
4 are about to undertake your final function as
5 jurors. Your duty is a serious and important one.
6 In performing it, you actively share with the Court,
7 the responsibility of administering justice according
8 to law and the evidence in the case.

9 Your oath as jurors obliges you to discharge
10 this final task in an attitude of complete fairness
11 and impartiality -- and, as was emphasized by me
12 when you were selected as jurors -- without bias or
13 prejudice, for or against the Government or the
14 defendant as parties to this controversy.

15 The case is important to the Government, since
16 the enforcement of the criminal laws is of prime
17 importance to the welfare of the community.

18 Obviously it is equally important to the
19 defendant who is charged with a serious crime and
20 has the right to receive a fundamentally fair trial--
21 the community has an interest in that, too.'

22 Let me add: The fact that the Government is
23 a party entitles it to no greater consideration than
24 that accorded to any other party to a litigation.

25 By the same token, it is entitled to no less
consideration.

CHARGE OF THE COURT
Charge

30a
1353

1
2 All parties, Government and individuals alike,
3 stand as equals before the bar of justice.

4 Your final role is to decide and pass upon
5 the fact issues in the case.

6 You are the sole and exclusive judges of the
7 facts. You determine the weight of the evidence;
8 you appraise the credibility of the witnesses; you
9 draw the reasonable inferences from the evidence;
10 you resolve such conflicts as there may be in the
11 evidence.

12 I shall later refer to how you determine the
13 credibility of witnesses.

14 My final function is to instruct you as to
15 the law, and it is your duty to accept these instruc-
16 tions as to the law and to apply them to the facts
17 as you may find them.

18 With respect to any fact matter, it is your
19 recollection, and yours alone that governs.

20 As I have already told you, anything that
21 counsel, either for the Government or the defense
22 may have said with respect to matters in evidence,--
23 whether during the trial, in a question, in argument,
24 or in summation -- is not to be substituted for
25 your own recollection of the evidence.

So, too, anything the Court may have said

Charge

1354

1
2 during the trial, or may refer to during the course
3 of these instructions, as to any matter in evidence,
4 is not to be taken in lieu of your own recollection.

5 Before we consider the precise charges against
6 the defendant on trial, some preliminary matters
7 should be noted.

8 At the beginning of the trial, you will recall
9 that I read the indictment to you in which three
10 defendants were named as follows:

11 Jose Valenzuela Correa, Manuel Gonzalez, John
12 Doe, also known as Mario C.

13 Jose Valenzuela Correa, whom I shall hereafter
14 refer to as Correa, is not on trial here, because,
15 as you will recall, he previously pled guilty to
16 the charge of conspiracy alleged in count one of
17 the indictment, and has testified before you as a
18 witness for the Government.

19 His guilty plea, however, is not to enter into
20 your consideration in determining whether or not the
21 Government has proved the charges alleged against
22 Manuel Gonzalez, the defendant here on trial.

23 The absence of the third defendant, John Doe,
24 also known as Mario C. is also a matter of no concern
25 to you here, and no adverse inference may be drawn

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2 against the Government or the defendant Gonzalez
3 by reason of that fact.

4 There are certain principles of law which
5 apply in every criminal case, and to which I made
6 reference and emphasized at the time of your selection
7 as jurors, and I repeat them now.

8 The indictment is merely an accusation, a
9 charge. It is no evidence of proof of the defendant's
10 guilt. You will give no weight whatever to the fact
11 that an indictment was returned against the defendant.

12 The defendant on trial has pleaded "Not
13 guilty."

14 Thus, the Government has the burden of proving
15 the charges against him beyond a reasonable doubt.

16 A defendant does not have to prove his
17 innocence. On the contrary, he is presumed to be
18 innocent of the accusations contained in the indict-
19 ment.

20 This presumption of innocence was in his favor
21 at the start of the trial, continues in his favor
22 throughout the entire trial, is in his favor, even
23 as I instruct you now, and remains in his favor during
24 the course of your deliberations in the jury room.

25 It is removed only if and when you are
satisfied the Government has sustained its burden of

1
2 proving the guilt of the defendant beyond a reasonable
3 doubt.

4 The question that naturally comes up is, what
5 is a reasonable doubt.

6 The words almost define themselves -- that
7 there is a doubt, founded in reason and arising out
8 of the evidence in the case, or the lack of evidence.
9 It is a doubt which a reasonable person has after
10 carefully weighing all the evidence, whether the
11 evidence or lack of evidence was brought out on
12 direct examination, or on cross examination of the
13 witnesses.

14 Reasonable doubt is a doubt which appeals to
15 your reason; your judgment; your common sense and
16 your experience.

17 It is not caprice, whim, speculation, con-
18 jecture or suspicion. It is not an excuse to avoid
19 the performance of an unpleasant duty. It is not
20 sympathy for a defendant.

21 If, after a fair and impartial consideration
22 of all the evidence, you can candidly and honestly
23 say you are not satisfied of the guilt of a defendant,
24 that you do not have an abiding conviction of his
25 guilt -- in sum, if you have such a doubt as would

1
2 cause you, as prudent persons, to hesitate before
3 acting in the most important and weighty matters,
4 in your own personal affairs, then you have a reason-
5 able doubt, and in that circumstance, it is your
6 duty to acquit.

7 On the other hand, if after such an impartial
8 and fair consideration of all the evidence, you can
9 candidly and honestly say you do have an abiding
10 conviction of a defendant's guilt, such a conviction
11 as you would be willing to act upon, in the most
12 important weighty matters in your own personal
13 affairs, then you have no reasonable doubt, and under
14 such circumstances, it is your duty to convict.

15 One final word on this subject.

16 Reasonable doubt does not mean a positive
17 certainty or beyond all possible doubt. If that
18 were the rule, few persons, however guilty they might
19 be, would be convicted.

20 It is practically impossible for a person to
21 be absolutely and completely convinced of any
22 controverted fact, which by its nature, is not
23 susceptible of mathematical certainty.

24 In consequence, the law in a criminal case is
25 that it is sufficient if the guilt of a defendant is

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2 established beyond a reasonable doubt -- not beyond
3 all possible doubt.

4 Now, let us turn to the charges contained in
5 the indictment, which I will again read to you.

6 Count one states that on or about and between
7 the first day of September, 1972, and the ninth day
8 of October, 1972, both dates being approximate and
9 inclusive, within the Eastern District of New York,
10 and elsewhere, the defendants, Jose Valenzuela Correa,
11 Manuel Gonzalez and John Doe, also known as Mario C.
12 did conspire to commit an offense against the United
13 States in violation of Title 21, United States Code,
14 Section 952 (a), by conspiring to import into the
15 United States from a place outside thereof, a quantity
16 of cocaine hydrochloride, a schedule 2 narcotic drug,
17 controlled substance.

18 And then there are statutory references which
19 I will refer to later.

20 Count four, which is the second charge against
21 the defendant on trial, alleges that on or about
22 the first day of September, 1972, and the ninth day
23 of October, 1972, both dates being approximate and
24 inclusive, within the Eastern District of New York
25 and elsewhere, the defendants Jose Valenzuela Correa,

1
2 Manuel Gonzalez and John Doe, also known as Mario
3 C., did knowingly and intentionally import into the
4 United States from a place outside thereof, a quantity
5 of cocaine hydrochloride, a schedule 2 narcotic
6 controlled substance.

7 In summary, you will note, the defendant has
8 been charged in count 1 with conspiring to import
9 cocaine into the United States, in violation of a
10 Federal law known as the Drug Abuse Prevention and
11 Control Act.

12 Second, the defendant is charged in count
13 four, with what is known as a substantive offense.
14 That is, importing into the United States, a quantity
15 of cocaine in violation of the same Federal law.

16 The Congressional purpose expressed in the
17 Drug Act, as I shall abbreviate it, was to exercise
18 Federal control in order to prevent traffic in or
19 improper use of drugs having a substantial and detri-
20 mental effect on the health and general welfare of
21 the American people.

22 The Drug Act provides in Section 952 (a),
23 referred to in count 4, in pertinent part as follows:

24 (a) It shall be unlawful to import into the
25 customs territory of the United States from any place

1
2 outside thereof ...any controlled substance in
3 Schedules I or II...or any narcotic drug.

4 Section 963 of the Drug Act, referred to
5 in Count 1 of the indictment, reads in pertinent
6 part as follows.

7 Any person who attempts or conspires to
8 commit any offense defined in this subchapter is
9 punishable by imprisonment or fine or both.

10 The word "import" as used in the Drug Act,
11 means any bringing in or introduction of a controlled
12 substance to this country.

13 The words "customs territory of the United
14 States" simply means all the States, the District of
15 Columbia and Puerto Rico.

16 Before I spell out the specific elements the
17 Government must prove beyond a reasonable doubt,
18 I instruct you that the crimes charged in this case
19 are serious crimes which require proof of specific
20 intent, before the defendant can be convicted.

21 Specific intent, as the term implies, means
22 more than the general intent to commit the act.
23 To establish specific intent, the Government must
24 prove beyond reasonable doubt that the defendant
25 knowingly did an act which the law forbids, pur-
posely intending to violate the law.

1361

Charge

THE COURT: (continuing)

Knowledge and intent, of course, exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you may arrive at a decision on these questions is to consider all the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and circumstances whether you find that the requisite knowledge and intent were present at the time in question.

Knowledge and intent may be inferred from the surrounding circumstances. Direct proof is unnecessary.

Furthermore, insofar as intent is concerned, you are instructed that a person is presumed to intend the natural and probable, or ordinary consequences of his acts.

I instruct you also, that if you should find beyond a reasonable doubt that the white powder contained in the large cellophane bag in evidence, Government exhibit 1, is, in fact, cocaine hydrochloride, that would be a controlled substance within the meaning of the various sections of the Drug Act referred to in each of the two counts against

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the defendant.

Since the essential elements which the Government must prove in order to sustain the respective charges are somewhat different in the case of each count, we shall consider each separately.

I'm going to take up first the second charge against the defendant, contained in count 4 of the indictment, which alleges that he did knowingly and intentionally import cocaine into the United States.

Before the defendant may be convicted on that count, the Government must establish beyond a reasonable doubt the following essential elements:

1. That sometime during the period from September 1, 1972, to October 9, 1972, a quantity of cocaine hydrochloride was brought into the United States concealed on the person of Jose Correa.

Item 2. That the defendant Gonzalez knowingly and intentionally participated in bringing about the importation of that cocaine.

That is, that he acted not in ignorance or inadvertently, or by mistake, but that he was aware that he was violating the law of the United States.

It is not necessary for the Government to show that the defendant Gonzalez physically imported

Charge

the cocaine himself.

Where 2 or more persons are charged with the commission of a substantive crime, the guilt of any defendant may be established without proof that he personally did every act constituting the offense charged. This is so because under section 2 of Title 18, United States Code, every person who willfully participates in the commission of a crime may be found to be guilty of that offense.

I will read section 2 to you.

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Under this statute it is not even necessary the the aider or abettor be present at the actual commission of the offense.

I caution you, however, that mere presence and guilty knowledge on the part of a person would not suffice to make him an aider and abettor. You must

Charge

be convinced beyond a reasonable doubt that he was knowingly doing something to assist in accomplishing the crime.

Accordingly, you may find the defendant guilty of the offense of knowingly and intentionally importing cocaine if you find beyond a reasonable doubt that Correa committed the offense and that the defendant aided and abetted him.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourself these questions:

Did he associate himself with the venture?

Did he participate in it as something he wished to bring about?

Did he seek by his actions to make it succeed?

If he did, then he is an aider and abettor.

Now we turn to count one, which, as I told you, charges a conspiracy to violate the Drug Act.

What must the Government establish to prove a conspiracy?

The elements of the crime of conspiracy are:

First; that there be two or more persons involved;

Second, that they willfully and knowingly

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2 conspired or agreed;

3 Third, that they conspired to commit an
4 unlawful act;

5 Fourth, that at least one of the persons
6 involved committed an overt act, that is, knowingly
7 did something in furtherance of the conspiracy.

8 An overt act need not, itself, be an unlawful
9 act. But it must be an act which is done to further
10 the unlawful objective.

11 The indictment charges that the conspiracy
12 began in or about September 1, 1972, and continued to
13 about October 9, 1972.

14 The exact dates are not critical if you find
15 beyond a reasonable doubt that the conspiracy charged
16 existed at any time during this period.

17 Let me explain the first two elements. That
18 is to say, that there must be two or more persons
19 and that there must be an agreement.

20 As the evidence stands in this case, in order
21 to find a conspiracy, you must find beyond a reason-
22 able doubt that the defendant on trial and one or
23 both of the other alleged co-conspirators -- that
24 is Jose Correa or John Doe, known as Mario C. --
25 wilfully conspired or agreed that Correa would

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2 act as a courier to bring the cocaine into the
3 United States; and that Gonzalez would, in some way,
4 facilitate its introduction into the United States.

5 If you do not find from the evidence beyond
6 a reasonable doubt that there was such an agreement,
7 then you cannot find that a conspiracy existed.

8 Thus, you must first consider whether there
9 was a knowing and wilful agreement to import the
10 cocaine between the defendant on trial and one or
11 bot- of the other two co-conspirators. Remember,
12 unless two persons are involved, there can be no
13 conspiracy.

14 In order to find such an agreement, it is not
15 necessary that the persons charged mettogether
16 and entered into an express or formal agreement, or
17 that they stated orally or in writing what the
18 scheme was or how it was to be effected. It is
19 sufficient to show that they came to a mutual
20 understanding to accomplish the unlawful act.

21 Before you find, however, that a defendant
22 on trial has become a member of a conspiracy, the
23 evidence in the case must show beyond a reasonable
24 doubt that the conspiracy was knowingly formed, and
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Charge

that the defendant willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

Such an agreement may be inferred from the circumstances and the conduct of the parties, since you may find that ordinarily a conspiracy is characterized by secrecy.

Nevertheless, suspicion cannot be a substitute for evidence.

To be a member of a conspiracy, the defendant need not know all of the details of a conspiracy, nor the means by which the objects were to be accomplished.

Each member of a conspiracy may perform separate and distinct acts. It is necessary, however, that the Government prove beyond a reasonable doubt that a defendant was aware of the common purpose, and that the common purpose was criminal in nature and that the defendant was a willing and knowing participant with the intent to advance the purpose of the conspiracy.

However, I must caution you that if you should find that a defendant knowing of the existence of the conspiracy, took no action to prevent its continuance,

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took no steps to reveal its existence, that, in itself, would not make him guilty of the offense of conspiracy.

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Common sense will tell you that when persons, in fact, undertake to enter into a criminal conspiracy, much is left to the unexpressed understanding.

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What the evidence must show in order to establish that a conspiracy existed, is that the members, in some way or manner, impliedly or tacitly came to a common understanding to violate the law or to accomplish an unlawful plan.

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Explicit language or words are not required to indicate assent or attachment to a conspiracy.

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In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged co-conspirators which are done to carry out an apparent criminal purpose.

These include conversations and discussions among them to that end.

In that connection, however, I must call to your attention that when the co-conspirator Jose Correa was arrested at Kennedy Airport and thereafter agreed to cooperate with officials of the Government,

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he ceased, at that point, to be a co-conspirator, and his acts and declarations may not be considered by you in determining whether the defendant on trial was a member of the conspiracy.

That does not mean to say that what Correa did and said may not be considered by you in connection with the substantive crime. I refer only to the crime of conspiracy and the acts done by Correa now acting as -- not as a co-conspirator, but as an agent of the Government. The acts he did in that capacity could not be considered acts in furtherance of a conspiracy of which he was a part, because his part ceased upon his arrest.

(continued on next page.)

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THE COURT: (continuing)

Now, that also does not eliminate from your consideration, acts or statements of the defendant Gonzalez himself, responding to anything that the defendant -- or co-conspirator, I will call him -- that the defendant Gonzalez did in responding to anything that the co-conspirator Correa did, while acting as an agent for the Government because when one conspirator is arrested, does not necessarily bring to an end the conspiracy that may continue on. And it will be up to you to determine whether it continued to exist. And if so, for how long.

Now, mere association of a defendant with an alleged conspirator or conspirators does not establish his participation in a conspiracy, even if you find one did exist. Nor, as I have said, is knowledge of illegal acts of others sufficient.

The mere existence of an association or a friendship between a defendant and alleged co-conspirator, by itself, would not be sufficient to establish that defendant's participation in the conspiracy.

Likewise, if one acts in a way which furthers the conspiracy, but has no knowledge of it, he does not, thereby become a participant.

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What is necessary, as I have already said, is that the defendant participate in the conspiracy with knowledge of at least some of its purposes and with intent to aid the accomplishment of its unlawful ends.

Now, an additional element I previously stated you must find beyond a reasonable doubt is that the conspiracy was 1, to commit an unlawful act.

The indictment, as I have indicated, charges that the unlawful act here was the importation of cocaine in a secret manner in violation of the laws of the United States.

Now, I have also mentioned that the fourth essential element of the crime of conspiracy is that an overt act intended to effect the object of the conspiracy be committed by at least one of the co-conspirators after the unlawful agreement has been made.

An overt act is any step, action or conduct, which is taken to achieve, accomplish or further the objective of the conspiracy.

The purpose of requiring proof of an overt act is that while parties might conspire and agree

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to violate the law, yet they may change their minds and do nothing to carry it into effect, in which event it will not constitute an offense.

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And, as I said, the overt act need be neither a criminal act, nor the very crime which is the object of the conspiracy.

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On the other hand, such an act as that which was committed by Correa in bringing in the cocaine prior to his arrest, could be regarded by you as the commission of an overt act.

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It is not necessary for the Government to prove that each member of the conspiracy committed or participated in a particular overt act, since the act of any member done in furtherance of the conspiracy becomes the act of all of the other members.

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Also, the Government is not required to prove each of the overt acts or that an act occurred at the precise time or place as alleged in the indictment.

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It is sufficient if it proves the commission of at least one of the acts in the Eastern District of New York, at or about the time alleged.

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With these general principles as a guide, you will consider whether the Government has, beyond a

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reasonable doubt, established the essential elements of the conspiracy charged in count one of the indictment.

Now, the Government maintains here that it has established both a conspiracy and the participation of this defendant in that conspiracy by direct evidence and by circumstantial evidence.

What is direct evidence? Direct evidence is where a witness testified to what he saw, heard and observed and what he knows of his own knowledge, that which comes to him by virtue of his senses.

Circumstantial evidence is where facts are established from which, in terms of common sense and experience, one may logically infer other facts that are sought to be established.

For example, here in this courtroom there are no windows. When we came into the courtroom it may have been sunny outside. But when someone walked in with his coat laden with snowflakes, we know the weather has changed. But we haven't seen it happen. We just deduced that fact from seeing a person walk in with snow on his shoulders.

(continued next page.)

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2 That's what we mean by drawing inferences from
3 circumstances which rationally lead to other facts.

4 Circumstantial evidence, if believed, is of no
5 less value than direct evidence, or in either case you
6 must be convinced beyond a reasonable doubt of the guilt
7 of the defendant.

8 Whether a defendant knowingly and intentionally
9 participated in the claimed Conspiracy presents an issue
10 of fact.

11 Clearly this concerns what is in one's mind, as
12 we said before.

13 Medical science has not yet devised an instrument
14 whereby we can go back to the time of the occurrence of
15 the events, and determine what then was a persons' intent
16 or knowledge.

17 These may be determined from one's acts, his con-
18 duct, and surrounding circumstances, and such inferences
19 which may reasonably be drawn therefrom.

20 If you find circumstances of secrecy, intrigue,
21 or attempt to conceal the true nature of a transaction,
22 these may be considered by you as circumstantial evidence
23 of a criminal intent.

24 Proof of motive is not a necessary element of the
25 crime with which the defendant is charged.

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Charge of the Court

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Proof of motive does not establish guilt, nor does want of proof of motive establish that a defendant is innocent.

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If the guilt of a defendant is shown beyond a reasonable doubt, it is immaterial what the motive for the crime may be, or whether any motive be shown, but the presence or absence of motive is a circumstance which you may consider as bearing on the intent of a defendant.

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Now, the witness, Jose Correa has admitted his participation in the Conspiracy Charged in the Indictment, and I am relying, of course, to that period of time which preceded his arrest, when his connection, as I said before, with the Conspiracy, if one did exist, would have terminated as a matter of law. The testimony of such a participant implicating the defendant on trial as a perpetrator of the crime, and a member of the Conspiracy is inherently suspect, for such a witness may well have an important personal stake in the outcome of the trial. Such a witness may believe that the defendant's acquittal will vitiate rewards that have been promised to him in return for his testimony.

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The testimony of a participant which implicates another person is inherently suspect, and should be scrutinized with particular care and extreme caution.

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Charge of the Court

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It is an essential element of both the substantive and Conspiracy offenses charged in this Indictment that the Government prove beyond a reasonable doubt that the defendant on trial knew that the cocaine was illegally imported into this country, and that he aided and abetted its importation. If you do not find evidence that the defendant was aware of the illegally-imported nature of the Exhibit received in evidence, you must acquit the defendant of both Counts.

Now, I have not adverted to all the evidence upon which the Government and the defendant relied for their respective contentions.

All evidence, whether or not I have referred to it, or counsel have mentioned it in their summations, is important and must be considered by you.

In my outline of the testimony, I have sought to state the substance thereof with complete accuracy. However, if, perchance, any reference to testimony does not agree with your recollection, and I have stated this before, you are to disregard such references by me, and I emphasize this as strongly as words can convey meaning.

Always, it is your recollection, and yours alone, that governs, and you must unhesitatingly reject any statement as to a fact which I have made which does not

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2 accord with your recollection.

3 It must be apparent to you that the versions of
4 the Government and defense are in sharp divergence on
5 key points, and that critical issues of fact and cred-
6 ibility are raised on this case.

7 You are called upon to decide the fact issues
8 here.

9 How do you decide this?

10 Now, I think you understand why at the start of
11 the trial I suggested that it would be desirable and
12 important for you not only to listen, but to look at
13 the witnesses as they testified.

14 Your determination of the issue of credibility
15 very largely must depend upon the impression that a
16 witness made upon you as to whether or not he was tell-
17 ing the truth or giving you an accurate version of what
18 occurred.

19 I often say to Jurors, When you walk in the door
20 of that courtroom and sit in the jury box, while the trial
21 is going on, when you are deliberating in the jury room,
22 you have your common sense, your good judgment, and your
23 experience with you.

24 You decide whether or not a witness was straight-
25 forward and truthful; whether he attempted to conceal

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1 anything; whether he has a motive to testify falsely;
2 whether there is any reason why he might color his testi-
3 mony.
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5 In other words, what you try to do, to use the
6 vernacular, is to size a person up, just as you would
7 do, as I have said before, in any important matter where
8 you were undertaking to determine whether or not a per-
9 son is truthful, candid and straightforward.

10 In passing upon the credibility of a witness,
11 you may also take into account inconsistencies or contra-
12 dictions as to material matters in his own testimony,
13 or any conflict with that of another witness.

14 A witness, however, may be inaccurate, contradictory
15 or even untruthful in some respects, and yet be entirely
16 credible in the essentials of his testimony.

17 The ultimate question for you decide in passing
18 upon credibility is, Did the witness tell the truth here
19 before you as to essential matters?

20 The fact that some Government witnesses or Govern-
21 ment employees does not entitle their testimony to any
22 greater weight or consideration than that afforded to
23 any other witness in the case.

24 You will evaluate their credibility the same way
25 you do that of any other witness.

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2 If you find that any witness, and this applies
3 alike to Government and defense witnesses, willfully
4 testify falsely to any material fact, you have a right
5 to reject the testimony of that witness in its entirety,
6 or you may accept that part or portion which commends
7 itself to your belief as credible.

8 The law permits, but does not require, a defendant
9 to testify in his own behalf.

10 The defendant Gonzalez has taken the witness stand.
11 Obviously he has a deep, personal interest in the result
12 of his prosecution.

13 Indeed, it is fair to say he has the greatest
14 stake in its outcome.

15 Interest creates a motive for false testimony,
16 the greater the interest, the stronger the motive, and
17 a defendant's interest in the result of his trial is of
18 a character possessed by no other witness.

19 In appraising his credibility, you may take that
20 fact into consideration.

21 However, it by no means follows that simply be-
22 cause a person has a vital interest in the end result
23 that he is not capable of telling a truthful, candid and
24 straightforward story.

25 It is for you to decide to what extent, if at all,

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1 his interest has affected or colored his testimony.

2 The defendant has offered evidence of his reputa-
3 tion in the community for honesty, truth and veracity,
4 integrity, and as a law-abiding citizen. Such evidence
5 must be considered by you along with all of the other
6 evidence in this case in determining whether there is
7 proof beyond a reasonable doubt of the defendant's guilt.
8 Evidence of a defendant's good character which is not
9 consistent with the traits involved in the commission
10 of a crime, may in itself give rise to a reasonable doubt,
11 since the jury is entitled to conclude that it is improb-
12 able that a person of good character would commit such
13 a crime.
14

15 But, if on all the evidence you are satisfied
16 beyond a reasonable doubt that the defendant is guilty,
17 a showing that he had previously enjoyed a reputation of
18 good character, does not justify or excuse the offense,
19 and you should not acquit a defendant merely because you
20 believe he is a person of good repute.

21 The testimony of a character witness is not to
22 be regarded by you as expressing the witness' personal
23 opinion of the defendant's character, nor is it to be
24 taken by you as the witness' opinion as to the guilt or
25 innocence of the defendant. The guilt or innocence of

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1 the defendant is for you and you alone to determine.

2
3 During the course of the trial, the attorneys
4 at various times have objected to certain questions,
5 have moved to strike answers, and taken other procedural
6 positions before you.

7 These are matters of technical procedure that are
8 the proper concern of the attorneys, and should not con-
9 cern you.

10 I instruct you that you are not to draw an infer-
11 ences from the fact that attorneys have made objections
12 and motions before you during the trial, or to anything
13 the Court may have said or done in ruling upon such motions
14 or objections.

15 The Government, to prevail, must prove the essen-
16 tial elements by the required degree of proof, as already
17 explained in these instructions.

18 If it succeeds, your verdict should be guilty;
19 if it fails, it should be not guilty.

20 You find a defendant not guilty on one Count, or
21 not guilty on both counts, or guilty on one count, and
22 not guilty on the other, as the case may be, or you may
23 find, as I say, not guilty on all counts. However, to
24 find this one defendant guilty, you must find that he
25 was engaged in the Conspiracy alleged with at least one

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2 other person not on trial, since as I told you, a Con-
3 spiracy requires an agreement or understanding between
4 at least two persons.

5 Your verdict in each instance must be unanimous.

6 Your function is to weigh the evidence in the
7 case, and to determine the guilt or innocence of the
8 defedant solely upon the basis of such evidence and these
9 instructions.

10 Under your Oath as Jurors, as I mentioned previ-
11 ously, you cannot allow a consideration of the sentence
12 which may be imposed upon a defendant, if he is convicted,
13 to enter into your deliberations, or to influence your
14 verdict in any way.

15 Your duty is to decide the case solely and only
16 upon the evidence.

17 In the event of a conviction, the duty of imposing
18 sentence rests solely with the Court.

19 Each juror is entitled to his or her own opinion,
20 but each should, however, exchange views with his fellow
21 jurors.

22 That is the very purpose of jury deliberation, to
23 discuss and to consider the evidence; to listen to the
24 arguments of fellow jurors; to present your individual
25 views; to consult with one another; and to reach an agree-

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2 ment, based solely and wholly on the evidence, if you
3 can do so without violence to your own individual judg-
4 ment.

5 Each one must decide the case for himself, or
6 herself, after consideration with his or her fellow
7 jurors.

8 But you should not hesitate to change an opinion,
9 which, after discussion with your fellow jurors, appears
10 erroneous.

11 However, if after carefully considering all the
12 evidence, and the arguments of your fellow jurors, you
13 entertain a conscientious view that differs from others,
14 you are not to yield your judgment simply because you
15 are outnumbered or outweighed.

16 Your final vote must reflect your conscientious
17 view as to how the issues should be decided.

18 The Charge here is most serious.

19 The just determination of this case is important
20 to the public; it is equally important to these defendants.

21 Under your Oath as Jurors, you must decide this
22 case without fear or favor, and solely, as I have stated
23 any number of times, in accordance with the evidence and
24 the law.

25 If the Government has failed to carry its burden

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1 as to a defendant, your Sworn duty is to acquit; if it
2 has carried its burden as to a defendant, you must not
3 flinch from your Sworn duty, you must convict.
4

5 Now, at this time, I'll ask you to recess for a
6 few minutes while I discuss with counsel here whether
7 there are any additional instructions, and also I will
8 discuss with them the question of whether we should ask
9 you to stay or let you go home and come back bright and
10 early tomorrow.

11 Some of your, I believe, live fairly far out on
12 the Island, do you not?

13 We will give you a brief recess. You have heard
14 an awful lot, put you in there for a while, all fourteen
15 of you, because I also have to make a determination with
16 respect to the two Alternate Jurors who have sat here so
17 patiently for almost three weeks, and this I wish to
18 discuss with counsel, so take them out, Mr. Clerk, for
19 a while.

20 (Whereupon, Jurors were excused.)
21

R2 fls 22 (continued on next page.)
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MIGUEL SCHWEITZER
MIGUEL SCHWEITZER WALTERS
ABOGADOS
AGUSTINAS 972 - OF. 501-502
TELEFONO 80689
SANTIAGO-CHILE

March 18 th, 1974.-

Mr. Alfred Toombs Esq.
335 Broadway
New York, N.Y. 10013
U. S. A.
=====

Dear Mr. Toombs:

As promised by telephone to you I am writing to give all information available about Mr. Mario Mena Flores that you requested from me in order to have an interview with him here in Chile.

The first thing I did was to call the telephone number you gave me. Although who answered said that he had lived there, the person added that he had left that house over a year ago.

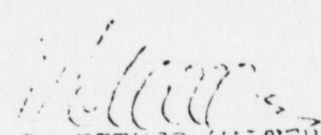
I went to the place indicated (Lo Plaza 1256 Apt. 44) and there I found out that Mr. Mena had been living there with his wife. Nevertheless he had abandoned her about a year ago naturally not saying where he left for.

There they also told me that he had left his previous job, that he was working as a taxi driver ignoring who could be the owner of the cab. Finally I was informed that about a month and a half ago, he had had an accident and was recovered in a city Hospital (Barros Luco).

Unfortunately in that hospital there was nobody registered in the last sixty days by the name of Mario Mena Flores.

As time has passed I will get in touch with a police officer and ask him as a personal favor to see if by his information he can help me in finding the man. If anything comes up in the meantime, or in the near future I will phone you immediately.

Sincerely yours,


MIGUEL SCHWEITZER WALTERS

MSN/cac

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CORRESPONDENCE RE DEPOSITION

63a

LAW OFFICES OF
ALFRED LAWRENCE TOOMBS

305 BROADWAY
NEW YORK, N. Y. 10013
(212) 431-3490

March 19, 1974

MAR 21 1974

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P
Y

Thomas R. Pattison
Assistant United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York, 11201

Re: United States v. Manuel Gonzalez
72 Cr 1176

Dear Mr. Pattison:

This will confirm our various telephone conversations concerning the proposed deposition of Mario Mena Flores in Santiago Chile. Immediately after our pre-trial conference before Judge Neaher on March 4, I telephoned our Chilean counsel to request his immediate response to our prior letter concerning the deposition. I was advised by our Chilean counsel that he would get in touch with Mr. Mena Flores, whose address and telephone number we had, and arrange for the deposition on March 21 or 22. I advised our counsel that time was of the essence and that I wanted a report by Friday, March 8. Late in the afternoon of that day our counsel called back. However, I was out of the office preparing another case for trial and had left word for him to call me on the following Saturday. Our counsel was unable to do this and I did not get to speak to him until the afternoon of March 11.

At that time, our counsel informed me that he had visited Mr. Mena Flores' home and had been informed by Mrs. Mena Flores that her husband had abandoned her recently and that she did not know where he was living. I instructed our counsel to continue to search for the witness and that I would telephone on Thursday, March 14 for a further report. Immediately after talking with our counsel, I telephoned your office to inform you of this development but you were not in. I left a message for you on several occasions but we were unable to get in touch until Thursday, March 14. At that time I told you that I would be talking with our counsel that evening. I did

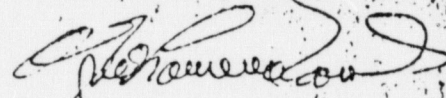
LAWRENCE TOOMBS

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speak to our counsel on March 14, and he advised me that so far his search had been negative, but that if he had an additional two weeks time he believed that he might be able to locate Mr. Mena Flores. I advised our counsel to do so and requested a written report of his efforts so far. I informed you of these developments on Friday, March 15, during which time I was actually on trial in the Southern District.

O
It is our position that we are awaiting our efforts to locate Mr. Mena Flores and that we are prepared to go to Santiago immediately after being advised that he has been found. We do not propose to take longer than the date of the scheduled pre-trial conference, April 16, to do this,

Very truly yours,


Alfred Lawrence Toombs

ALT:fj

P
cc: Hon. Edward R. Neaher
United States District Judge
Eastern District of New York

Y

CORRESPONDENCE RE DEPOSITION
MIGUEL SCHWEITZER
MIGUEL SCHWEITZER WALTERS
ABOGADOS
AGUSTINAS 972 - OF. 501-502
TELEFONO 80889
SANTIAGO - CHILE

65a

August 2, 1974.-

Mr. Alfred Toombs Esq.
335 Broadway
New York, N.Y. 10013
U. S. A.

Dear Mr. Toombs:

I am writing to you again with a summary of what has been done here in Chile to try and find Mr. Mario Mena Flores, because my previous letter got lost.-


As I told you by writing too in my letter of March 18th. this person had left his house, where he lived with his wife, about a year and a half ago, ignoring where he had gone because he had abandoned her. He afterwards had begun to drive a taxi -according to his wife- but she did not know who the owner was, what made impossible getting any trace of the man. Even more, I was told that he had had an accident and that he had been in a hospital, but there nobody had been registered by the name of Mario Mena Flores.-

Following your instructions, I got in touch with a police officer and asked for some information about this man, and if possible, giving me his actual address. The last information the police could offer was the one I had because he has not had to give any authority his new address, so that information also failed.

As a matter of fact, here in Chile there is no way of calling a man in front of a Court or Judge if you do not accuse him of something. There is no procedure to get the police on the trail of someone except if the man has committed a crime.

I am sorry that nothing useful has resulted of my action here in Chile in interest for your client but I cannot do anything more than what I have already done. You asked for a written statement and I sent it some time ago. I do it once again hoping this time you receive it and it may help.-

Sincerely yours,


Miguel Schweitzer Walters

MOTION FOR DEPOSITION
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

66a

-----x
UNITED STATES OF AMERICA, :

Plaintiff, : 72 Cr. 1176

-against- :

AFFIDAVIT

JOSE VALENZUELA-CORREA, BOLIVAR :
IRIZASSY, MANUEL GONZALEZ and :
JOHN DOE, also known as MARIO :
"C", :

Defendants. :
-----x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ JAN 11 1973 ★
TIME AM
P.M.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ERNEST H. HAMMER, being duly sworn, deposes and says:

I am the attorney for the defendant, MANUEL GONZALEZ.

On November 28, 1972 by Notice of Motion the defendant moved to take the oral examination of one MARIO MENA, a citizen and resident of Chile. The affidavit, dated November 17, 1972, of the defendant is to be read herewith.

The need and materiality of MARIO MENA's deposition is clearly apparent from the prior affidavit of defendant submitted in support of the application.

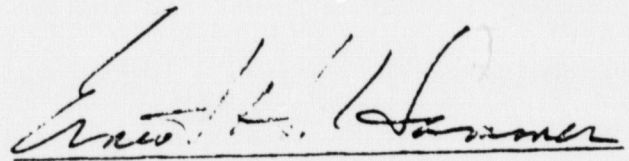
On January 2, 1973 I represented to this Court that my investigation of the exact whereabouts of MARIO MENA in Chile had indicated that a person in New York was in possession of such

information. I have since interviewed that person whose name is EDUARDO DEL CANTO, 830 MacLean Avenue, Yonkers, New York.

MR. DEL CANTO has advised me and the defendant that he is a native of Chile and now a citizen of the United States. He further informed me that he is a friend of MARIO MENA since boyhood and reports that MARIO MENA's full true name is MARIO MENA FLORES. Also he states that MARIO MENA FLORES resides at Lo Plaza 1256, Apt. 44, Santiago, Chile. He further informs us that MARIO MENA FLORES is a substantial businessman in Santiago, Chile and is the owner of a broom and a shoe factory.

We renew our motion herein and urge the Court in the interest of justice to make an order permitting the deposition of MARIO MENA FLORES be taken pursuant to Rule 15 at the United States Embassy in Santiago, Chile before a consular officer authorized to take such deposition.

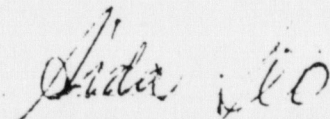
As previously stated MARIO MENA FLORES is a citizen and resident of Chile and thus cannot be subpoenaed for trial. If the Court denies the defendants' motion then the defendant will effectively be denied the opportunity to produce the testimony of a witness who is necessary and material to a proper defense of this action.



ERNEST H. HAMMER

Sworn to before me this

9th day of January, 1973.



Notary Public

AIDA LEO
Notary Public, State of New York
No. 31-7-92275
Qualified in New York County
Commission Expires March 30, 1974

FILED
CLERK OF COURT
DISTRICT COURT N.Y.

UNITED STATES DISTRICT COURT

JAN 24 1973

EASTERN DISTRICT OF NEW YORK

FILED
P.M.

-----x

THE UNITED STATES OF AMERICA :

vs. :

72 Cr. 1176

JOSE VALENZUELA-CORREA, :
BOLIVAR IRIZARRY, MANUEL :
GONZALEZ, JOHN DOE, also :
known as "Mario C." :

AFFIDAVIT

Defendants. :

-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ANDREW M. LAWLER, JR., being duly sworn, deposes
and says:

1. I am the trial attorney for the defendant,
MANUEL GONZALEZ, and submit this affidavit in further support of
defendant's motion to take the deposition of MARIO MENA pursuant
to Rule 15 of the Federal Rules of Criminal Procedure.

2. During the court appearance of January 15, 1973
your deponent represented that an attorney had been retained
in Santiago in connection with the proposed deposition and
that the attorney was in process of attempting to contact
MR. MENA. Subsequent to that date the attorney, MR. ALDUNATE,
informed us that he had spoken to MARIO MENA and that MR. MENA
agreed to have his deposition taken in Santiago, Chile but

would not come to the United States to testify. MR. ALDUNATE stated, however, that his conversation with MR. MENA had taken place prior to the time that he had received our telegram containing proposed questions to be put to MR. MENA. MR. ALDUNATE informed us that he had made arrangements to speak with MR. MENA again.

3. A decision was thereafter made that ERNEST H. HAMMER, ESQ. would fly to Santiago, Chile and participate in this scheduled interview. On January 14, 1973 MR. HAMMER flew from New York to Santiago, Chile. On January 16, 1973 MR. HAMMER telephoned your deponent from Santiago and stated that he had personally spoken with MR. MARIO MENA who had confirmed that he was willing to have his deposition taken in Santiago, Chile but he was unwilling to travel to the United States to testify at the trial. During MR. HAMMER's interview of MR. MENA, MENA stated that he was physically in New York during portions of 1972, that he knew the defendant, MANUEL GONZALEZ, and that he had been to GONZALEZ' bar on ten to fifteen occasions. MENA further confirmed that he had discussed with the defendant the subject of the importation of shoes from Santiago and their subsequent sale by GONZALEZ in New York. MR. MENA stated to MR. HAMMER that he is a representative of a shoe manufacturing concern in Santiago, Chile.

4. MENA acknowledged that he knows the defendant, JOSE VALENZUELA-CORREA; that VALENZUELA-CORREA was an employee

and
of the Confederacion De E.E. Particulares De Chile; that he was aware that the defendant, VALENZUELA, was going to New York in October 1972. MENA stated that he gave VALENZUELA-CORREA a letter of introduction to GONZALEZ in New York. When MR. HAMMER showed to MARIO MENA the letter which the defendant, VALENZUELA-CORREA, did in fact deliver to the defendant, GONZALEZ, MENA denied that that was the letter which he had given to VALENZUELA. MR. HAMMER is now in the process of obtaining a sworn statement to the above effect from MARIO MENA, which will be submitted in support of the application to take MENA's deposition in Santiago. The reason for this affidavit is to bring these facts immediately to the Court's attention to avoid unnecessary delay.

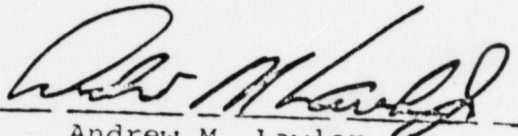
5. I have informed MR. HAMMER of my appearance before the Court on this date and he has advised that he will remain in Santiago until after I have made the instant application to the Court.

6. Your deponent respectfully submits that MENA's testimony is clearly material to the defense of this case. In addition, MENA is a foreign national, residing in Chile, not subject to the subpoena power of this Court, and who has stated a willingness to be deposed. Your deponent respectfully requests therefore that in order to prevent a failure of justice, the Court enter an order pursuant to the provisions of Rule 15 of the Federal Rules of Criminal Procedure, permitting the defendant

MOTION FOR DEPOSITION

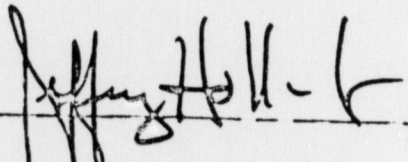
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to take the deposition of MARIO MENA in Santiago, Chile.


Andrew M. Lawler, Jr.

Sworn to before me this

23 day of January, 1973.


JEFFREY HOLLAND
NOTARY PUBLIC STATE OF NEW YORK
No. 3241555
Columbia County
Commission Expires March 1974

MOTION FOR DEPOSITION

72a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

JOSE VALENZUELA-CORREA, BOLIVAR
IRIZASSY, MANUEL GONZALEZ and
JOHN DOE, also known as MARIO "C",

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

JAN 15 1973

TIME AM.....
PM

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

72CR1176

ANDREW M. LAWLER, JR., being duly sworn,
deposes and says:

1. I am the trial attorney for the defendant Manuel Gonzalez and submit this affidavit in further support of defendant's motion to take the deposition of Mario Mena pursuant to Rule 15 of the Federal Rules of Criminal Procedure.

2. The original application to take Mena's deposition was made by Notice of Motion returnable November 28, 1972. That motion was supported by a detailed affidavit of the defendant which set forth the reasons why the defense believed that it was imperative to take the deposition of Mario Mena, who is a resident and citizen of Chile. It is also clear from the date of submission of this

motion that defendant's request was made at the earliest possible time, was made in good faith and could not be considered dilatory.

3. As of the time of the original application, the defendant was unaware of the exact address in Chile of this potential witness. The defense, thereafter, located a Mr. Eduardo Del Canto, who was able to provide Mario Mena's full name and address. Upon receipt of this information the defendant submitted an affidavit of Mr. Hammer dated January 9, 1973, renewing the motion. Immediately thereafter your deponent and Mr. Hammer made efforts to contact and to retain counsel in Santiago, Chile, in connection with the proposed deposition. On January 10 I obtained the name of an attorney in Santiago, Chile, to wit, Sergio Aldunate. Efforts to reach Mr. Aldunate on January 10 were not successful. However, on the morning of January 11 I spoke to Mr. Aldunate by telephone at his office in Santiago and retained him to work with us on this matter. That same day I sent a cable to Mr. Aldunate confirming our telephone conversation. Included in this cable was the request to locate and interview Mario Mena Flores and to determine whether he would consent to have his deposition taken in Santiago. The cable stated that "time is of essence".

4. Your deponent respectfully submits that the testimony of Mario Mena Flores is absolutely essential to the defense of this case and that defendant has expeditiously acted upon and pursued all information which he was able to obtain concerning the identity and whereabouts of this witness. To force the defendant to trial without permitting him an opportunity to fully investigate and develop this information would effectively deny him his right to properly prepare his defense.

5. The original affidavit submitted by defendant Gonzalez sets forth in some detail the materiality of Mario Mena's testimony and your deponent will attempt to further expand on that issue. Based upon the discovery thus far obtained, it is clear that the Government will not allege that defendant, Gonzalez, had actual possession of the drugs. Essentially the Government will rely on circumstantial evidence in an attempt to establish Gonzalez knowing participation in this conspiracy. One of the critical areas of proof will relate to the delivery of a letter to defendant Gonzalez by defendant Valenzuela-Correa. The letter, apparently sent from Santiago, and signed by a Mario, refers to the delivery of certain goods. The Government will maintain that the letter related to drugs and further, that Gonzalez knew that the shipment contained drugs.

Mr. Gonzalez has testified before a Grand Jury and has submitted a detailed affidavit to this court to the effect that he does, in fact, know a Mario in Santiago, Chile, and that he was expecting a shipment of goods from him. He has testified, however, that the shipment he was expecting was a shipment of shoes and that that shipment was expected as the result of certain conversations he had had with one Mario Mena Flores in New York some months prior to the incident in question.

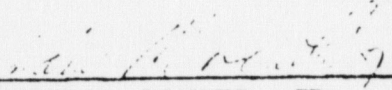
6. We have been informed that Mario Mena Flores is in fact the owner of a shoe factory in Chile. It is therefore essential to the defense of this case to obtain the testimony of Mena Flores in an effort to corroborate the testimony of defendant, Gonzalez.

7. There would appear to be no question but that such testimony would be material and vital to the defense if Mario Mena Flores were present in this country and willing to testify. The fact that he is a citizen and resident of Chile and thus not subject to the subpoena power of this Court does not make this testimony any less material or relevant to the trial of the case.

MOTION FOR DEPOSITION

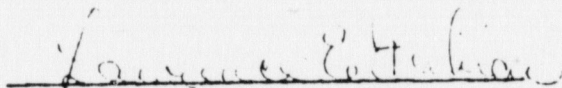
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8. Therefore, your deponent respectfully requests that the Court grant defendant's motion to take the deposition of Mario Mena Flores in Santiago, Chile, or, in the alternative, to grant an adjournment of this action to allow defendant to pursue this matter with counsel in Chile in an attempt to submit additional supporting evidence to the Court.


ANDREW M. LAWLER, JR.

Sworn to before me

this 12th day of January, 1973.



LAWRENCE E. FALIAN
Notary Public, State of New York
No. 31-111,320
Qualified in New York County
Commission Expires March 30, 1978